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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B5

[redacted]

DATE: JAN 05 2012 OFFICE: TEXAS SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. At the time he filed the petition, the petitioner was completing his doctoral studies in molecular biology [redacted] and sought to begin a postdoctoral fellowship [redacted] The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

In this decision, the term "prior counsel" shall refer to [redacted] who represented the petitioner at the time the petitioner filed the petition. The term "counsel" shall refer to the present attorney of record.

On appeal, the petitioner submits a brief from counsel and two new witness letters.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
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> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on July 10, 2007. At the time, prior counsel asserted that the petitioner's work "is dedicated to offer prospects of finding anti-atherosclerosis therapy, and will potentially lead to a better understanding of cardiovascular diseases." Prior counsel stated:

> Overall, [the petitioner] has been a pioneer in the study of the fundamental cellular and molecular mechanisms by which vascular smooth muscle gene expression is regulated. Moreover, [the petitioner's] many years of devotion to vascular development and cardiovascular disease research, both in Singapore and the U.S., give him an unparalleled background in his area that makes him the perfect candidate to achieve new breakthroughs in this field. His research is directly related to potential cures for atherosclerosis, which is widespread throughout the US and Western Europe, and well known as a major cause of various cardiovascular diseases. [The petitioner's] work is therefore not only scientifically significant, but also proves to be extremely valuable to medicine.
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> . . . [The petitioner] has backed his outstanding research with a truly remarkable record of high quality and quantity publications. . . . [The petitioner's] past achievements are far above those of similar training and experience and prove that he is especially qualified to make significant strides that are likely greater than those of his peers.

The petitioner's initial submission included copies of four published articles and the manuscript of a fifth; and information showing eight citations of an article published in 2003; one citation of an article from 2007; and three citations of a second article from 2007.

The petitioner also submitted eight witness letters, mostly from collaborators. [redacted] and an adjunct professor at BCM, described the petitioner's doctoral research in technical detail, and stated that the petitioner's "finding completely changed the current view of vascular smooth muscle gene regulation." [redacted] concluded that the petitioner "is among the very best young scientists today."

[redacted], who served on the petitioner's doctoral thesis committee, deemed the petitioner "one of a very select group of scientists who will be able to bring crucial and irreplaceable expertise and training in basic science to bear on cardiovascular research problems in biomedical science." Other witnesses agreed that the petitioner had a promising research career ahead of him, and asserted that it would be in the national interest to ensure that the petitioner continued performing cardiovascular research.

On March 3, 2008, the director issued a request for evidence, instructing the petitioner to submit documentation to show how he stands apart from others in his field and meets the guidelines set forth in *Matter of New York State Dept. of Transportation*. In response, counsel explained how the petitioner's findings are of use to the scientific community.

New witnesses provided additional letters in support of the petition. For instance, [redacted] organized a 2007 meeting at which the petitioner presented a poster. [redacted] asserted that the petitioner's "pioneering work linked epigenetics and cardiovascular research together. It is no doubt a

breakthrough in understanding the normal program of cardiovascular differentiation." [redacted] concluded that the petitioner "is unequivocally a valuable scientist for our cardiovascular research field."

[redacted] asserted that the petitioner "will continue to use his expertise to contribute greatly to the epigenetics research in [the] cardiovascular field."

The petitioner also submitted updated citation information, showing two citations of one article, 19 citations of a second article, and 58 citations of a third (the petitioner's 2007 article from *Cell*). Counsel stated that the explosive increase in citations of the petitioner's work – from 12 to 85 in less than a year – "demonstrate[s] the widespread interest in [the petitioner's] work, [and] also the reliance of others on his findings."

The director denied the petition on July 23, 2008. The director acknowledged the intrinsic merit and national scope of the petitioner's occupation, but found that the petitioner had not shown his "accomplishments [to be] any greater than [his] peers."

On appeal, the petitioner submits two further witness letters. [redacted] associate professor at the [redacted] states that the petitioner's efforts "have spurred significant progress in our model of cardiac gene regulation."

[redacted] states: "Many laboratories have used both the target prediction method and the gene expression data reported in [the petitioner's] paper to explore the function of microRNAs in the cardiovascular system and found that the method is a great improvement over the ones previously available."

Counsel, in an appellate brief, asserts that the petitioner's work has been influential in the field, and that the petitioner has established the superior quality of his work.

While the appeal was pending, the AAO took note of other filings by the petitioner or on his behalf. After further research, the AAO issued a notice on October 31, 2011, which read, in part:

> Your claim of eligibility for the national interest waiver rests on your research accomplishments as a doctoral student at Baylor College of Medicine. Several witnesses have stated that your achievements there indicate that you will continue to make valuable contributions as a researcher in the future. At the time you filed the Form I-140 petition, you indicated that you were about to begin postdoctoral training at the Salk Institute for Biological Studies (Salk Institute), San Diego, California.
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> USCIS records show that you held H-1B nonimmigrant status authorizing you to work at the Salk Institute until April 30, 2011, but you left the Salk Institute no later than September 30, 2009. The record does not explain the reasons for the early termination of this employment. Your departure resulted in the automatic

revocation of your nonimmigrant status under the USCIS regulation at 8 C.F.R. § 214.2.

Subsequently, you worked for [redacted] Alexandria, Virginia, under H-1B nonimmigrant status valid through September 21, 2012. According to the Form I-129 petition that [redacted] filed on your behalf, you worked not as a researcher but as a part-time "Biomedical Technical Writer." You then left [redacted] no later than January 4, 2010, which resulted in another automatic revocation of your nonimmigrant status.

It appears that you are now a law student at the University of Chicago Law School. Your name and photograph appear several times in the web site of the [redacted], for example at [redacted] (printout added to record October 5, 2011), identifying you as a member of [redacted] executive board.

You based your application for a national interest waiver on your achievements as a researcher, and on the premise that your future scientific research would benefit the United States. After only a matter of months, however, you first ceased to perform research and then apparently left the scientific field altogether in order to attend law school. The AAO, therefore, intends to dismiss your appeal, because your career trajectory appears to be very different from the research career that formed the basis of your waiver application.

If you intend to claim that you will return to a research career, please submit thorough and credible documentary evidence to support such a claim. Witness letters are secondary evidence, and by themselves cannot suffice in this regard. The AAO will weigh any explanation you offer against the documented proof that you left your postdoctoral position prematurely, in order to pursue part-time employment and, later, graduate-level education that did not involve scientific research.

The AAO allowed the petitioner 15 days to respond to the notice. The record contains no response from the petitioner. Therefore, the AAO considers the record to be complete as it now stands. The petitioner has not contested the AAO's conclusions as stated in the October 31, 2011 notice. Therefore, those conclusions stand. The AAO finds that the petitioner has abandoned the research career which formed the sole foundation of his claim to be eligible for the national interest waiver.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has

not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.